No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

IN RE: HAROLD F. YOUNGER,

Debtor.

DONNA E. YOUNGER,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the postpetition costs of providing medical services and health care to an individual debtor under Chapter 7 of the Bankruptcy Code while he is being held in the custody of the United States Marshals Service as ordered by a bankruptcy court pursuant to FED. R. BANKR. P. 2005 are "administrative expenses" of the estate or personal postpetition expenses of the debtor.

LIST OF ALL PARTIES TO THE PROCEEDINGS

Donna E. Younger

United States of America

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ON PETITION FOR A WRIT OF CERTIORTARI TO THE UNITED STATES DISTRICT COURT FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

In re Younger, 163 B.R. 609 (Bankr. S.D. Ga. 1993), reproduced herein at Appendix 16a-23a; *Younger v. United States of America (In re Younger)*, 165 B.R. 965 (Dist. Ct. S.D. Ga. 1994), reproduced herein at Appendix 5a-15a; *Younger v. United States of America (In re Younger)*, No. 94-8573

(11th Cir. March 27, 1995), reproduced herein at Appendix 1a-2a.

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Eleventh Circuit was entered on March 27, 1995. This Court has jurisdiction to issue the requested writ of certiorari under 28 U.S.C. § 1254(1).

Subject matter jurisdiction in the District Court for the Southern District of Georgia was pursuant to 28 U.S.C. § 1331. Petitioner Donna E. Younger placed her former husband, Harold F. Younger, in involuntary Chapter 7 Bankruptcy. *See* 11 U.S.C. § 303(b). This case arises out of an application by the United States for treatment of certain expenses as administrative expenses within that Bankruptcy proceeding.

STATUTES INVOLVED

Section 503 of the Bankruptcy Code provides:

> **§ 503 Allowance of administrative expenses.**
>
> (a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.
>
> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-
>
> > (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case; . . . .

11 U.S.C.A. § 503 (1993 & Supp. 1995).

Section 521 of the Bankruptcy Code provides:

> The debtor shall—
>
> (1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;
>
> * * * *
>
> (3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;
>
> (4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recording information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; and
>
> (5) appear at the hearing required under section 524(d) of this title.

11 U.S.C.A. § 521 (1993).

18 U.S.C. § 4007 provides:

> The expenses attendant upon the confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

18 U.S.C.A. § 4007 (1985).

STATEMENT OF THE CASE

A. Factual Background.

This is a Chapter 7 involuntary bankruptcy proceeding which followed a highly contested divorce proceeding. On January 19, 1992, the Superior Court of Chatham County, Georgia, awarded Donna E. Younger ("Ms. Younger") a judgment of $912,635.00 against her former husband, Harold F. Younger ("Mr. Younger" or "Debtor"). After learning that Mr. Younger had transferred and concealed assets in an attempt to evade the divorce judgment, Ms. Younger filed a petition on March 27, 1992, to place Mr. Younger in involuntary bankruptcy. The Bankruptcy Court for the Southern District of Georgia ("bankruptcy court") subsequently issued orders for Mr. Younger to submit to an examination and to file a schedule of assets and liabilities under FED. R. BANKR. P. 2004. Mr. Younger did not comply with either of these orders. On May 21, 1992, the bankruptcy court entered an order for relief. App. 16a-17a.

Ms. Younger moved the bankruptcy court on June 11, 1992, for an order to bring Mr. Younger before the court for the purpose of a hearing in accordance with FED. R. BANKR. P. 2005(a). Following withdrawal of the reference to the bankruptcy court for the limited purpose of considering that motion, the District Court for the Southern District of Georgia ("district court") ordered the United States Marshals Service ("Marshals Service") to apprehend and bring Mr. Younger before the court. Mr. Younger was arrested and brought before a United States Magistrate Judge in Jacksonville, Florida, who then ordered that Mr. Younger be transferred to the Southern District of Georgia. App. 16a-17a.

During examination on June 27, 1992, Mr. Younger invoked the Fifth Amendment privilege against self-incrimination in response to virtually every question concerning his estate. The U.S. Attorney for the Southern District of Georgia subsequently petitioned the district court for an order granting

Mr. Younger use and derivative use immunity. Despite being granted immunity, Mr. Younger continued to refuse to comply with the court's order to submit to a Rule 2004 examination. On November 20, 1992, the district court ordered that Mr. Younger be incarcerated for refusing to testify. App. 16a-17a.

While in the custody of the Marshals Service, Mr. Younger was hospitalized with heart problems and underwent surgery. Mr. Younger later underwent surgery, while still in custody, to correct gall bladder problems. The Marshals Service contends that it incurred, assumed, or paid a total of $105,066.49 in medical and health care expenses for Mr. Younger. The Marshals Service also contends that it incurred, assumed, or paid a total of $6,787.96 in costs locating and apprehending Mr. Younger. App. 18a.

B. Proceedings Below.

The United States filed an application with the bankruptcy court seeking to recover these costs from the bankruptcy estate as administrative expenses. App. 18a. The application was granted by the bankruptcy court which stated two bases for its decision. First, the bankruptcy court found "the expenses and costs were necessary and have served to preserve the estate" because Mr. Younger's incarceration prevented him from further transferring and concealing his assets. App. 22a. Second, the bankruptcy court reasoned that the power to incarcerate a debtor to ensure compliance with federal law is so critical to the viability of the bankruptcy process that costs incident to incarceration deserve priority classification. App. 22a.

This decision was affirmed by the district court on the ground that the costs and expenses related to Mr. Younger's incarceration were actual and necessary costs of preserving the estate. App. 11a-12a. The district court held that the costs of Mr. Younger's incarceration necessarily included the costs of the medical care, so that those expenses were also

entitled to administrative expense status. App. 15a. The district court rejected the second of the two bases for the bankruptcy court's decision, reasoning that the costs were not incident to the operation of a debtor's business. App. 15a.

The United States Court of Appeals for the Eleventh Circuit ("court of appeals" or "Eleventh Circuit") affirmed the district court's order without opinion. App. 1a-2a.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit has sanctioned a departure from the accepted and usual course of judicial proceedings which calls for the exercise of this Court's power of supervision. *See* SUP. CT. R. 10.1(a). The allowance of a debtor's postpetition personal medical expenses as an administrative expense of a bankruptcy estate is contrary to one of the most important, if not the most important, concepts implicated in a bankruptcy proceeding—i.e., the separation of the bankruptcy estate and prepetition liabilities from the debtor's postpetition estate and on-going postpetition expenses. The judicial decisions establish that a postpetition claim must confer an actual benefit upon the bankruptcy estate for that claim to be classified as an administrative expense, whereas the Eleventh Circuit in this case sanctioned administrative expense priority based upon a potential benefit to the estate. The departure from the accepted and usual course of judicial proceedings by the Eleventh Circuit on such an important issue necessitates review by this Court. *See e.g.*, *City of New York v. Saper*, 336 U.S. 328, 329 (1949) ("We granted certiorari to resolve the conflict, the matter being of considerable practical importance in the administration of the Bankruptcy Act").

In *Reading Co. v. Brown*, 391 U.S. 471 (1968), this Court granted certiorari to determine whether the negligence of a receiver administering a bankruptcy estate gave rise to an "actual and necessary" cost of operating the debtor's business

"because the issue is important in the administration of the bankruptcy laws and is one of first impression in this Court." *Id.* at 475. This case presents the issue of whether a debtor's personal medical expenses while incarcerated are "actual, necessary costs and expenses of preserving the estate" in a liquidation proceeding under Chapter 7 of the Bankruptcy Code, and like *Reading* presents an issue of first impression in this Court. The Eleventh Circuit's treatment of such medical expenses as administrative expenses of the estate releases the debtor from personal obligations and imposes these liabilities upon prepetition creditors who are not statutorily obligated to pay such costs.

THE ELEVENTH CIRCUIT HAS SANCTIONED A DEPARTURE FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS FOR DETERMINING WHICH CLAIMS HAVE ADMINISTRATIVE EXPENSE PRIORITY

I. The Debtor's Medical Expenses Did Not Confer an Actual Benefit on the Estate.

Section 503(b) of the Bankruptcy Code establishes several specific classes of postpetition claims as "administrative expenses." *See* 11 U.S.C. § 503(b). Administrative expenses are paid out of the bankruptcy estate as "first priority" claims ahead of other claims against the estate, rather than being treated as obligations of the debtor personally although such claims arise after the filing of a bankruptcy petition. 11 U.S.C. § 507(a).

The debtor has no obligation to pay for administrative expenses and, conversely, the estate has no obligation to pay for the debtor's postpetition personal expenses. *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986); *In re Walter*, 83 B.R. 14, 19 (Bankr. 9th Cir. 1988). Indeed, there is no statutory authority for a bankruptcy court to provide for the

personal expenses of a debtor out of property of the estate should it desire to do so. *In re Vincent*, 4 B.R. 21, 23 (Bankr. M.D. Tenn. 1979). Thus, the debtor's necessary postpetition living expenses must come from employment obtained subsequent to the filing of the bankruptcy proceedings, from borrowing funds, from gifts, or otherwise. *Id.* at 23; *In re Dervaes*, 81 B.R. 127, 128 (Bankr. S.D. Fla. 1987).

Among the claims entitled to treatment as administrative expenses are those which arise from "the actual, necessary costs and expenses of preserving the estate. . . ." 11 U.S.C. § 503(b)(1)(A). In this case, the district court affirmed the bankruptcy court ruling on the ground that the costs and expenses related to Mr. Younger's incarceration were actual and necessary costs of preserving the estate. App. 11a-12a. That determination is a departure from the usual judicial construction of the statutory phrase "actual, necessary costs and expenses of preserving the estate." As Mr. Younger's medical expenses are postpetition obligations of a personal nature, rather than actual and necessary costs of preserving the estate, those expenses must be satisfied from postpetition assets.

That the Marshals Service incurred costs while Mr. Younger was in its custody does not obligate the estate to pay those expenses. To treat such postpetition costs as expenses of the estate rather than of Mr. Younger is to release Mr. Younger from those debts incurred during his incarceration for avoiding his legal obligations and for contempt of court. Any payment to the United States would, accordingly, directly reduce the recovery by Mr. Younger's prepetition creditors, whose only source of recourse is against prepetition assets, while relieving Mr. Younger of his accountability for personal debts.

Because the allowance of a claim as an administrative expense entitles the claimholder to payment of the claim as a first priority, the statute is strictly construed to limit such claims. *Broadcast Corp. of Georgia v. Broadfoot*, 54 B.R.

606, 611 (N.D. Ga. 1985), *aff'd, Broadcast Corp. of Georgia v. Broadfoot (In re Subscription Television of Greater Atlanta)*, 789 F.2d 1530 (11th Cir. 1986); *In re Hemingway Transport, Inc.*, 954 F.2d 1, 4-5 (1st Cir. 1992); *In re Drexel Burnham Lambert Group Inc.*, 134 B.R. 482, 488 (Bankr. S.D.N.Y. 1991); *In re Englewood Community Hospital Corp.*, 117 B.R. 352, 358 (Bankr. N.D. Ill. 1990); *In re Grant Broadcasting of Philadelphia, Inc.*, 71 B.R. 891, 897 (Bankr. E.D. Penn. 1987); *Hassett v. Revlon, Inc. (In re O.P.M. Leasing Services, Inc.)*, 23 B.R. 104, 121 (Bankr. S.D.N.Y. 1982). *See generally, Otte v. United States*, 419 U.S. 43, 53 (1974).

This strict construction is particularly appropriate in Chapter 7 cases, such as the one at hand, as the estate is liquidated rather than reorganized. *Broadcast Corp.*, 54 B.R. at 611. "Since the goal in a Chapter 7 case is to 'cash out' the bankrupt entity, rather than continue its operations, Chapter 7 is more concerned with maximizing the size of the estate to be distributed than with the Chapter 11 goal of inducing third parties to contribute towards the continued operation of the business." *Id.* at 611. Both the rationale for treating certain claims as administrative expenses and the effect of such classification require a narrow construction of the class of claims entitled to administrative expense treatment.

Because the allowance of a claim as an administrative expense diminishes the recovery of prepetition creditors, the usual course of judicial proceedings is to classify as administrative expenses solely those postpetition expenses that confer an *actual* benefit upon the bankruptcy estate. *See e.g., Broadcast Corp. of Georgia v. Broadfoot (In re Subscription Television of Greater Atlanta)*, 789 F.2d at 1532; *Boyd v. Dock's Corner Associates (In re Great Northern Forest Products, Inc.)*, 135 B.R. 46, 59 (Bankr. W.D. Mich. 1991); *In re ICS Cybernetics, Inc.*, 111 B.R. 32, 36 (Bankr. N.D.N.Y. 1989); *In re O.P.M. Leasing Services, Inc.*, 23 B.R. at 121. "The use of the words 'actual' and 'necessary' [in § 503(b)] indicate that the estate must accrue a real benefit from the

transaction for which the claim is being filed. *The mere potential of benefit to the estate does not satisfy this requirement.*" *Broadcast Corp.*, 54 B.R. at 611 (emphasis added). *See also*, *In re ICS Cybernetics*, 111 B.R. at 36; *Marion Corp. v. Louisiana Gas Systems, Inc. (In re Marion Corp.)*, 67 B.R. 487, 490 (Bankr. S.D. Ala. 1985) (benefit to estate must be measurable); *In re Rhymes, Inc.*, 14 B.R. 807, 808 (Bankr. D. Conn. 1981).[1]

The district court held that Mr. Younger's medical expenses benefitted the estate to the extent that Mr. Younger was prohibited from further concealing himself or his assets. App. 12a-13a. The district court did not, however, find to what extent that "benefit" existed, nor could it as there was no "actual" benefit. A debtor's medical expenses do not confer an actual benefit upon the estate as they preserve the debtor personally rather than the estate. Preserving the debtor's life may result in some tangential benefit to the estate, but that does not convert personal medical expenses into administrative expenses any more than prolonging the debtor's life converts the debtor's housing expenses or other daily costs of living into administrative expenses. *See In re Vincent*, 4 B.R. 21 (Bankr. M.D. Tenn. 1979) (refusing to permit payment of

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[1] In *Reading Co. v. Brown*, 391 U.S. 471 (1968), this Court held "that damages resulting from the negligence of a receiver acting within the scope of his authority as receiver give rise to 'actual and necessary costs' of a Chapter XI arrangement." *Id.* at 485. *Reading* has been cited by various courts of appeals for the proposition that in a reorganization proceeding under the Bankruptcy Code administrative expenses are not limited to those claims that actually benefit the estate. *See e.g.*, *Alabama Mining Comm'n v. N.P. Mining Co., Inc. (In re N.P. Mining Co., Inc.)*, 963 F.2d 1449, 1454 (11th Cir. 1992). These decisions are not applicable to a Chapter 7 proceeding as they all arose from proceedings under Chapter 11 of the Bankruptcy Code. *See In re Hemingway Transport, Inc.*, 954 F.2d 1, 4-5 (1st Cir. 1992) (stating *Reading* criteria inapplicable to Chapter 7 proceeding); *Younger v. United States (In re Younger)*, 165 B.R. 965, 971 (S.D. Ga. 1994) (distinguishing *In re N.P. Mining* and *Reading* from the Chapter 7 case under consideration).

necessary living expenses from assets of estate despite fact debtor suffered a heart attack). The indirect benefit to the estate from providing medical care to a debtor is not what courts ordinarily refer to as an "actual" or "measurable" benefit to the estate.

The benefit to the estate referred to by both the bankruptcy court and the district court was merely potential. Neither court could identify any specific asset or amount of money which the Debtor would have concealed but for his incarceration, nor could either court connect the Debtor's medical expenses to a quantifiable benefit to the estate. Potential benefits can not form the basis for administrative expense claims. A creditor is only granted administrative expense priority status when the estate has actually received a measurable benefit from the expense. *Broadcast Corp.*, 54 B.R. at 611.

The Marshals Service is not entitled to priority in the distribution of the bankruptcy estate simply because it paid a personal obligation of Mr. Younger. "[T]he administrative expense scheme does not focus in the first instance on whether a creditor sustained a loss during this period, but on whether the estate has received an actual benefit." *Broadcast Corp.*, 54 B.R. at 611. Incurring expenses which confer an indirect benefit does not entitle a postpetition creditor to priority in the distribution of the bankruptcy estate. *Kinnan & Kinnan Partnership v. Agristor Leasing*, 116 B.R. 162, 166 (Dist. Neb. 1990); *In re Speeds Billiards & Games, Inc.*, 149 B.R. 434 (Bankr. E.D. Tex. 1993); *In re Jack Winter Apparel, Inc.*, 119 B.R. 629 (Bankr. E.D. Wis. 1990); *In re Ram Manufacturing, Inc.*, 38 B.R. 252, 254 (Bankr. E.D. Penn. 1984); *In re ICS Cybernetics, Inc.*, 111 B.R. at 36.

If Mr. Younger had not been incarcerated when he received medical treatment, it could not be contended that the costs of such treatment are administrative expenses simply because prolonging Mr. Younger's life may lead to the recovery of assets concealed by him. To the contrary, those expenses

would simply be treated as postpetition claims to be recovered from postpetition assets. The only difference in this case is that Mr. Younger was being held by the Marshals Service in an attempt to compel him to perform his legal obligations at the time of his medical treatment. That circumstance does not change the nature of the medical expenses from personal obligations into obligations of the estate. Simply stated, the estate's ability to pay a claim does not obligate it to do so when there is no actual and quantifiable benefit to the estate.

II. Extraordinary Medical Expenses Are Not "Necessary" Costs of Preserving the Bankruptcy Estate.

A debtor's medical expenses are not "necessary" costs of preserving the bankruptcy estate because those costs are the statutory obligation of either the debtor personally or of the United States. *See* 18 U.S.C.A. § 4007 (1985); 11 U.S.C. § 502 (1994). A debtor is required by § 521 of the Bankruptcy Code to provide particular information regarding property of the estate and to turn over that property. *See* 11 U.S.C.A. § 521 (1993). These are statutory duties, and the debtor is not entitled to compensation for performing them, much less to the treatment of any costs incurred by complying with the statute as administrative expenses. Thus, it was held in *In re Neese*, 137 B.R. 797 (Bankr. C.D. Ca. 1992), that "the value of Debtors' services was not a 'necessary' expense because those services were already pledged to the estate by the act of filing bankruptcy." *Id.* at 800 (citing *In re Roco Corp.*, 37 B.R. 770, 773 (Bankr. D.R.I. 1984)). In the case *sub judice*, the Debtor was only incarcerated because he refused to comply with the duties required by § 521. Because the Debtor can not claim compensation for the costs of performing his statutory duties, the costs of attempts to compel him to do so should not be considered "necessary" expenses.

The Debtor's personal medical expenses are not expenses of the estate because they are the statutory obligation of

the United States. *See* 18 U.S.C.A. § 4007 (1985). The district court erroneously concluded that 18 U.S.C. § 4007 did not require the United States to bear the costs of the debtor's medical treatment. App. 14a n.5. That section provides:

> The expenses attendant upon the confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

18 U.S.C.A. § 4007 (1985). Thus, the United States is statutorily obligated, at least initially, to pay the costs incurred as a result of the incarceration of a debtor who violates provisions of the bankruptcy code. The district court states that "nothing in the statute prevents the United States from seeking repayment from the responsible party." App. 14a n.5. The court, however, incorrectly found the responsible party to be the bankruptcy estate rather than Mr. Younger.

It was held that the precursor to 18 U.S.C. § 4007, which was substantially identical in its scope to the current statute, prevented the recovery from a bankruptcy estate of the costs of confining a debtor charged with contempt. *See e.g., In re Lenka*, 295 F. 570 (E.D.N.Y. 1923); *In re Centrone Coal Co., Inc.*, 6 F. Supp. 628 (E.D.N.Y. 1934). In *Lenka*, the court stated:

> Consideration has been given to the suggestion that, as the creditors directly benefit by the exercise of this power of the court, particularly where the bankrupt finally obeys the order and pays over money as directed, they should defray such necessary expenses as may be involved in carrying the order into effect; but the general public interest is involved in obedience to all lawful orders made by the court, which is itself one of the three great branches into which the government is divided, and

> it devolves upon the government itself to provide funds necessary to enable the court to properly and completely protect the rights of all suitors whose claims are presented for determination, and who apply for protection of the rights to which every litigant is entitled.

Lenka, 295 F. at 571. Thus, the court held that the government, and not creditors, was liable for maintenance of a bankrupt committed for contempt. *Id.* As the two statutes are substantively identical,[2] the result in the case under consideration should have been the same. Inexplicably, the district court noted that "in the criminal context this statute [18 U.S.C. § 4007] serves as authorization for U.S.S.G. § 5E1.2(i). Pub. L. 100-690, 102 Stat. 4463 (1988)" and that "Section 5E1.2(i) permits a court to impose an additional fine *upon a convicted defendant* in an amount 'at least sufficient to pay the costs to the government of any imprisonment. . . .'" App. 14a n.5 (emphasis added). Thus, it is Mr. Younger against whom the United States should seek to recover its costs, not the bankruptcy estate.

Assuming, *arguendo*, that the cost of incarceration could be treated as a "necessary" expense, it does not follow that the costs of medical treatment are "necessary costs and expenses *of preserving the estate*. . . ." 11 U.S.C. § 503(b)(1)(A) (emphasis added). The medical costs are properly separated from the other costs of incarceration because as extraordinary surgical expenses they are not an inherent component of being

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[2] The precursor to 18 U.S.C. § 4007 stated:

> § 701. *Expenses for transportation and confinement of prisoners paid by United States.* All the expenses attendant upon the transportation from place to place, and upon the temporary or permanent confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

18 U.S.C. § 701 (quoted in *In re Centrone Coal Co., Inc.*, 6 F. Supp. at 629).

incarcerated like the costs of feeding a prisoner are. Similarly, if Mr. Younger had committed a tort while incarcerated, such as assaulting a fellow prisoner or a guard, it could not be contended that the claim for damages from such a tort is an administrative expense. Such a claim would be a personal obligation of Mr. Younger's arising from an act that is not an inherent component of his incarceration. In the same way, Mr. Younger's personal medical expenses are not estate obligations regardless of whether the other actual costs of incarceration are. Even when administrative expense priority exists for a particular claim, those elements of the claim that are tangential to the preservation of the estate and arise from the debtor's conduct or condition should be disallowed. No administrative expense priority exists unless an actual and measurable benefit has been conferred upon the bankruptcy estate.

III. The Proper Remedy for the United States Is To Proceed Against Mr. Younger Personally, Rather than Claiming First Priority to the Assets of the Bankruptcy Estate.

The denial of administrative expense priority does not leave the United States without a remedy against Mr. Younger; the United States would simply not be entitled to first priority treatment for its claim. *See* 11 U.S.C. § 507(a)(1). The automatic stay does not prevent the United States from pursuing ordinary judicial actions and remedies against Mr. Younger. *See e.g., In re Lewis*, 33 B.R. 98 (Bankr. W.D.N.Y. 1983) (postpetition creditor denied administrative priority as proper remedy was to advance claim in state court). The Marshals Service should pursue its claim against Mr. Younger personally, just as a private health care provider would be required to do had Mr. Younger not been incarcerated at the time he sought medical treatment.

CONCLUSION

The Eleventh Circuit's departure from the accepted and usual construction of § 503 of the Bankruptcy Code necessitates review of whether a debtor's postpetition medical expenses while incarcerated are administrative expenses of the estate or personal postpetition expenses of the debtor.

Respectfully submitted,

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